

NORTH CAROLINA  
EDGECOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
19 CVS 1042

ESTATE OF DOROTHY LYONS, by  
and through its Administrator,  
Misheer Davail Lyons; and ESTATE  
OF EUGENE LYONS, and through its  
Administrator Cedric Jamaal Lyons,  
Plaintiff,

v.

CSX TRANSPORTATION, INC.; CSX  
CORPORATION; TOWN OF  
WHITAKERS, NORTH CAROLINA;  
NASH COUNTY, NORTH CAROLINA;  
AND EDGECOMBE COUNTY,  
NORTH CAROLINA,

Defendants.

**DEFENDANT TOWN OF  
WHITAKERS' MOTION TO  
DISMISS AS TO ALL CLAIMS**

Defendant Town of Whitakers, North Carolina, by and through undersigned counsel, hereby moves the Court pursuant to N.C. R. Civ. P. 12(b)(1),(2) and(6), and requests that this Court dismiss all the claims alleged in Plaintiff's Complaint with prejudice as to the Town of Whitakers, North Carolina, based upon the following grounds:

(1) Plaintiff has failed to state a claim upon which relief may be granted on the basis that Plaintiffs' Complaint fails to allege facts evidencing that Defendant Town of Whitakers owed a duty of care to inspect, repair, maintain, design, report problems or otherwise ensure the safety of the railroad crossing. As a result, Plaintiffs claims should be dismissed pursuant to Rule 12(b)(6) of the North Carolina

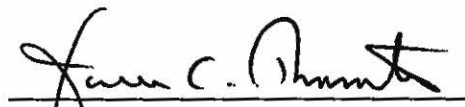
Rules of Civil Procedure.

(2) Plaintiff has failed to state a claim upon which relief may be granted for gross negligence on the basis that the Plaintiffs' Complaint fails to allege facts evidencing that Defendant Town of Whitakers was grossly negligent with respect to the railroad crossing. As a result, Plaintiffs claims should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.


(3) Plaintiff's Complaint should be dismissed for lack of subject matter jurisdiction, lack of personal jurisdiction and failure to state a claim upon which relief may be granted on the basis of governmental immunity. Attached as an exhibit is an Affidavit with a true and accurate copy of the Town of Whitaker's insurance policy evidencing that immunity was not waived through the purchase of insurance. As a result, Plaintiffs claims should be dismissed pursuant to Rules 12(b)(1),(2) and (6) of the North Carolina Rules of Civil Procedure.

This the 14<sup>th</sup> day of February, 2020.

BY:



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*Attorneys for Defendant Town of Whitakers*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 14, 2020, I served the foregoing *Defendant Town of Whitaker's Motion to Dismiss* on all of the parties to this cause by depositing a copy, postage prepaid, in the United States Mail, addressed to the attorney for each party as follows:


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Respectfully submitted by:

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